

Message Text

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ACTION NEA-16

INFO OCT-01 EUR-25 ISO-00 CIAE-00 PM-07 H-03 INR-11 L-03

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20 SAM-01

SSO-00 INRE-00 NSCE-00 DRC-01 USIE-00 /104 W

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O 291738Z AUG 74

FM AMEMBASSY MANAMA BAHRAIN

TO SECSTATE WASHINGTON DC IMMEDIATE 1457

INFO SECDEF WASHINGTON DC IMMEDIATE

CNO WASHINGTON DC IMMEDIATE

CINCUSNAVEUR LONDON UK IMMEDIATE

COMIDEASTFOR

C O N F I D E N T I A L SECTION 1 OF 2 MANAMA 0674

E.O. 11652: GDS

TAGS: MARR, BA, US

SUBJECT: MIDEASTFOR STATIONING AGREEMENT

REF: STATE 185446, 187102, 188513

SECDEF FOR ISA

1. CMEF ADMIRAL HANKS AND I HAD LONG MEETING AUG. 29 WITH MINISTER OF STATE FOR LEGAL AFFAIRS BAHARNA TO RECEIVE PRELIMINARY GOB REACTION TO OUR DRAFT NOTES ON TERMINATION PROVISION AND JURISDICTION PROVISION OF STATIONING AGREEMENT. IN ABSENCE OF FONMIN, BAHARNA HAS BEEN DESIGNATED AS GOB OFFICIAL TO NEGOTIATE THESE QUESTIONS (DEVELOPMENT MINISTER SHIRAWI, DUE BACK IN BAHRAIN SEPT. 3, WILL HANDLE NEGOTIATIONS ON LEASE (RENT/PIER SPACE) AND ON TECHNICAL ASSISTANCE). BAHARNA WAS AUTHOR GOB INFORMAL DRAFT PROPOSAL WHICH SERVED AS BASIS WASHINGTON DISCUSSIONS DURING MY CONSULTATION.

2. BAHARNA COMMENTS AUG. 29 WERE VERBAL AND TENTATIVE AND HE PROBABLY WILL HAVE TO GO BEFORE CABINET, OR AT LEAST PRIME
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MINISTER, TO SEEK FINAL APPROVAL IN PRINCIPLE OF EVENTUAL

AGREED DRAFT TEXT. NEVERTHELESS, IT OBVIOUS HE IS CARRYING THE BALL FOR GOB, THAT HE HAS GIVEN OUR DRAFT PROPOSAL CAREFUL AND EXPERT STUDY, AND THAT HE WILL EXERT GREAT INFLUENCE AS THE "GOVERNMENT'S LAWYER" IN OBTAINING GOB APPROVAL OF AN AGREED TEXT, IF WE CAN COME UP WITH ONE.

3. WHAT IS ALSO OBVIOUS IS THAT GOB WANTS TO MAKE A DEAL ON BASIS OUR PROPOSED DRAFT NOTE, FEELS IT HAS BEEN MOST FORTHCOMING AND EXPECTS US TO BE FORTHCOMING AS WELL. SPECIFICALLY ON BASIS BAHARNA'S COMMENTS AUG. 29 WE SEEM TO BE WELL ON WAY TO SLIDING PAST SEVERAL KEY PROBLEMS: PERFORMANCE OF DUTY CASES, OFFENSES AGAINST THIRD COUNTRY NATIONALS, AND SPECIFIED DAMAGE PAYMENTS FOR INDIVIDUALS. MOREOVER, WE MAY BE ABLE TO GET BY WITH LIMITING PARAGRAPH 2(A)(I) OF DRAFT TO "OFFENSES AGAINST SECURITY OF THE STATE UNDER BAHRAIN LAW", IF WE CAN BE FORTHCOMING GC RELATED LANGUAGE NOTED BELOW.

4. RE ARTICLE 14. BAHARNA SAID HE HAD NO PROBLEM WITH OUR DRAFT NOTE ON TERMINATION AND UNDERSTOOD THAT ONCE IT IS FORMALLY RECEIVED GOB IS NOT REPEAT NOT EXPECTED TO REPLY.

5. RE JURISDICTION NOTE. IN NOTING BAHARNA'S OBJECTIONS AND SUGGESTIONS I POINTED OUT IN APPROPRIATE PLACES THAT OUR DESIRE TO BE FORTHCOMING WAS LIMITED BY CONSTRAINTS OF AVOIDING AMENDING TEXT OF AGREEMENT, OF CONGRESSIONAL SENSITIVITY TO YIELDING CRIMINAL JURISDICTION OVER U.S. FORCES, AND OF PRECEDENTS IN OTHER SOFA'S. BAHARNA, WHO KEPT REFERRING TO TEXT OF OUR NATO SOFA, INDICATED FULL SYMPATHY WITH THESE CONSIDERATIONS AND HIS SUGGESTIONS BELOW REFLECT WEIGHING OF THEM.

A. PARA TWO OF NOTE: GOB SUGGESTS "TIGHTENING" OF LANGUAGE TO REFLECT ACTUAL LANGUAGE OF ARTICLE II, AS FOLLOWS: QTE ARTICLE 11 OF THE AGREEMENT IS BASED ON IMPLICIT RECOGNITION THAT THE STATE OF BAHRAIN IN EXERCISING SOVEREIGNTY OVER ITS TERRITORY HAS FULL AND UNLIMITED POWER TO EXERCISE JURISDICTION OVER OFFENSES ARISING IN ITS TERRITORY SUBJECT TO THE PROVISIONS OF BAHRAINI AND INTERNATIONAL LAW, AND THAT UNITED STATES MILITARY COMMANDERS HAVE THE AUTHORITY AND RESPONSIBILITY OF MAINTAINING GOOD
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ORDER AND DISCIPLINE WITHIN THE ARMED FORCES OF THE UNITED STATES. WITH THIS UNDERSTANDING, THE GOVERNMENTS AGREED IN ARTICLE 11, THAT TO FACILITATE THE OPERATION OF THE UNITED STATES MIDDLE EAST FORCE THE GOVERNMENT OF BAHRAIN WOULD EXERCISE CIVIL JURISDICTION OVER MEMBERS OF THE FORCE, EXCEPT FOR THOSE MATTERS ARISING FROM THE PERFORMANCES OF DUTY AND THAT THE U.S. AUTHORITIES WOULD EXERCISE JURISDICTION OVER CRIMINAL OFFENSES COMMITTED BY MEMBERS OF THE FORCE. END QTE.

B. PARA 5 OF DRAFT NOTE: BAHARNA REGISTERED OBJECTION TO LANGUAGE WHICH HE MAINTAINS WILL RAISE CONTINUING QUESTIONS OF WHAT OFFENSES ARE PUNISHABLE UNDER LAWS OF BOTH PARTIES. HE INDICATED UNDERSTANDING OF "CONCURRENT JURISDICTION" CONCEPT AND SUGGESTED NEW LANGUAGE WHICH WOULD COMMENCE WITH APPROPRIATE ADAPTATION PARA 2(A) AND (B) OF ARTICLE VII OF NATO SOFA AND THEN CONTINUE WITH LANGUAGE SUCH AS QTE IN ANY CASE IN WHICH THE RIGHT TO EXERCISE JURISDICTION IS CONCURRENT AND WHICH THE GOVERNMENT OF BAHRAIN CONSIDERS TO BE OF PARTICULAR IMPORTANCE AND HENCE WISHES TO EXERCISE JURISDICTION: UNQTE (END OF CLAUSE.), SUB PARA 1 TO FOLLOW IMMEDIATELY AFTER COLON.

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C. SUB PARA 2 A: BAHARNA EXPRESSED TENTATIVE SATISFACTION WITH THE LANGUAGE AS ORIGINALLY TRANSMITTED (STATE 185446) EXCEPT FOR MINOR CHANGES NOTED BELOW. HE ADAMANTLY RESISTED, HOWEVER, SUGGESTION THAT PERFORMANCE OF DUTY EXCEPTION MODIFY BOTH 2 A(1) AND 2 A(2) (STATE 187102) DESCRIBING THIS AS "AN EXCEPTION LARGER THAN THE GENERAL RULE AND HENCE REDUCING DRAFT NOTE TO A WORTHLESS SCRAP OF PAPER". HE NOTED GOB

WILLING CONSIDER USING OUR 2(A)(I) LANGUAGE RATHER THAN ITS PROPOSED LISTING OF OFFENSES AGAINST THE STATE BUT COULD NOT CONSIDER QUALIFYING 2(A)(I) WITH PERFORMANCE OF DUTY EXCEPTION. (COMMENT: I THINK WE SHOULD RECONSIDER OUR POSITION ON THIS, ESPECIALLY SINCE, AS STATE 188513 POINTS OUT, IT UNLIKELY PERFORMANCE OF DUTY ACTS WOULD EVER CONSTITUTE OFFENSES AGAINST SECURITY OF STATE. ALTERNATIVE COURSE MIGHT BE TO PICK UP LANGUAGE FROM PARA 2C AND 3A OF NATO SOFA BUT THIS GETS US INTO DEFINITION OF OFFENSES AGAINST SECURITY OF STATE WHICH MIGHT LEAD GOB TO REVERT TO INSISTENCE ON DETAILING ACTS AGAINST STATE, INCLUDING "INSULT TO PUBLIC OFFICERS".)

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D. PERFORMANCE OF DUTY EXCEPTION: BAHARNA INDICATED GOB REACTION TO PARA 2(A)(I) WAS TENTATIVE PENDING RECEIPT DEFINITIONS OF WHAT CONSTITUTES "PERFORMANCE OF DUTY". CMEF ADMIRAL HANKS SAID HE HAD ALREADY REQUESTED SUCH DEFINITIONS THROUGH NAVY CHANNELS AND WOULD PROVIDE THEM TO GOB.

E. PARA 3 OF DRAFT NOTE: AS I FEARED BAHARNA OBJECTED MOST STRONGLY TO LISTING OF "RIGHTS OF ACCUSED", (A) THROUGH (I), CHARACTERIZING THEM AS "UNNECESSARY" SINCE BAHRAINI LAW COVERED THESE POINTS AND "INCOMPLETE" SINCE BAHRAINI LAW COVERED FAR WIDER RANGE OF RIGHTS OF ACCUSED. HE UNDERSTOOD OMITTING THIS LIST MIGHT CAUSE PROBLEMS WITH CONGRESS, BUT SAID GOB WOULD HAVE EVEN GREATER PROBLEM WITH NATIONAL ASSEMBLY SHOULD IT DISCOVER USG DICTATING LEGAL RIGHTS WHICH GOB MUST EXTEND TO AMERICANS. HIS MOST TELLING ARGUMENT WAS THAT THIS LISTING HAD BEEN DROPPED FROM OUR EARLIER JURISDICTION PROPOSAL (DECEMBER 29, 1973 NOTE) AT REQUEST GOB AND THAT THIS SEEMED ONLY POINT ON WHICH USG WAS SLIPPING BACK FROM RATHER THAN BEING MORE FORTHCOMING THAN ITS DEC. 29, 1973 POSITION. MINISTER ADDED RE ITEM I THAT CORPORAL PUNISHMENT NO LONGER PRACTICED IN BAHRAIN AND THAT REVISED LEGAL CODE NOW GOING BEFORE CABINET FOR APPROVAL SPECIFICALLY FORBIDS CORPORAL PUNISHMENT. (COMMENT: BAHARNA STRONGLY URGED THAT WE DROP THIS LISTING LIMITING PARA 3 TO FIRST SENTENCE; AT SAME TIME HE APPEARED IMPRESSED THAT COMPARABLE LISTING OF SAFEGUARDS APPEARED IN NATO SOFA. HE WOULD STRONGLY PREFER TO SEE LISTING DROPPED ALTOGETHER AND I URGE WE CONSIDER DOING SO IN VIEW ITS ABSENCE FROM OUR DEC 29, 1973 NOTE. IF IT ESSENTIAL WE MENTION SAFEGUARDS WE MIGHT TRY PERSUADE GOB TO ACCEPT SEPARATE NOTE LISTING SAFEGUARDS EXACTLY AS STATED IN NATO SOFA WITH POSSIBLE ADDITION ITEM I (CORPORAL PUNISHMENT).)

F. RE PARA 8: BAHARNA ASKED FOR AND CMEF ADMIRAL HANKS PROMISED BRIEFING PAPER ON PROCEDURES AND AUTHORITY OF

PROPOSED CLAIMS COMMISSION. HE INDICATED IT MIGHT MEET
GOB NEED FOR PROMPT AND ADEQUATE COMPENSATION AS SPELLED
OUT IN PARA 8, THE "HUMAN CONCERN" ARTICLE OF HIS DRAFT
NOTE. HE ADDED HOWEVER THAT OUR SUGGESTED LANGUAGE PROBABLY
WOULD REQUIRE MODIFICATION TO INCLUDE SOME ADDITIONAL
REASSURANCE OF "PROMPT, ADEQUATE AND SUBSTANTIAL COM-
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PENSATION" IN ACCORDANCE WITH RULINGS OF BAHRAINI COURTS.

G. MINOR CHANGES: BAHARNA ASKED THAT IN ADDITION TO
REVISIONS IN TEXT OPENING SUBSTANTIVE PARAGRAPH WE CHANGE
OUR DRAFT AS FOLLOWS:

1) SUB PARA 2(A) OPENING LINE TO READ QTE CASES OF: END QTE
VICE QTE INVOLVING: END QTE. 2(A)(2) TO BE SEPARATED
BY QTE OR END QTE RATHER THAN QTE AND END QTE. LAST
SENTENCE 2(A)(II) TO BE SEPARATE PARA MARGINED WITH 2(A)
AND THE WORD QTE RECEIPT END QTE REPLACED BY QTE ISSUANCE
AND DELIVERY END QTE. SIMILARLY IN PARA 4 REPLACE QTE
RECEIPT END QTE WITH QTE ISSUANCE AND DELIVERY END QTE.
THROUGHOUT TEXT CHANGE WORD "DUTIES" TO "DUTY" WHEREVER
IT APPEARS AND USE "FROM" AFTER "ARISING" THROUGHOUT
TEXT.

6. COMMENT: WHILE ON BASIS RECENT WASHINGTON DISCUSSIONS
I REALIZE SOME OF BAHARNA SUGGESTIONS WILL CAUSE US A BIT OF
PAIN, I URGE THEY BE GIVEN MOST CAREFUL CONSIDERATION AND THAT WE
MEET THEM WHEREVER POSSIBLE. ADMIRAL HANKS AND I BOTH FEEL
WE ARE GETTING OFF PRETTY LIGHT AS FAR AS SUBSTANCE OF GOB
JURISDICTION DEMANDS IS CONCERNED. CERTAINLY WE SHOULD
NOT LET THOSE POINTS THAT ARE MAINLY MATTERS OF FORM KEEP
US FROM CLINCHING THE DEAL ON JURISDICTION. ADMIRAL HANKS
FULLY CONCURS IN THE FOREGOING REPORT AND, ESPECIALLY, IN
THE RECOMMENDATIONS.

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